

## § 655.144

## 20 CFR Ch. V (4–1–14 Edition)

determines to be potential sources of U.S. workers;

(2) Direct the employer to engage in positive recruitment of U.S. workers in a manner consistent with § 655.154 and to submit a report of its positive recruitment efforts as specified in § 655.156;

(3) State that positive recruitment is in addition to and will occur during the period of time that the job order is being circulated by the SWA(s) for interstate clearance under § 655.150 of this subpart and will terminate on the actual date on which the H-2A workers depart for the place of work, or 3 calendar days prior to the first date the employer requires the services of the H-2A workers, whichever occurs first; and

(4) State that the CO will make a determination either to grant or deny the *Application for Temporary Employment Certification* no later than 30 calendar days before the date of need, except as provided for under § 655.144 for modified *Applications for Temporary Employment Certification*.

### § 655.144 Electronic job registry.

(a) *Location of and placement in the electronic job registry.* Upon acceptance of the *Application for Temporary Employment Certification* under § 655.143, the CO will promptly place for public examination a copy of the job order on an electronic job registry maintained by the Department, including any required modifications approved by the CO, as specified in § 655.142. This procedure will be implemented once the Department initiates operation of the registry.

(b) *Length of posting on electronic job registry.* Unless otherwise provided, the Department will keep the job order posted on the Electronic Job Registry until the end of 50 percent of the contract period as set forth in § 655.135(d).

### § 655.145 Amendments to applications for temporary employment certification.

(a) *Increases in number of workers.* The *Application for Temporary Employment Certification* may be amended at any time before the CO's certification determination to increase the number of workers requested in the initial *Appli-*

*cation for Temporary Employment Certification* by not more than 20 percent (50 percent for employers requesting less than 10 workers) without requiring an additional recruitment period for U.S. workers. Requests for increases above the percent prescribed, without additional recruitment, may be approved by the CO only when the employer demonstrates that the need for additional workers could not have been foreseen, and the crops or commodities will be in jeopardy prior to the expiration of an additional recruitment period. All requests for increasing the number of workers must be made in writing.

(b) *Minor changes to the period of employment.* The *Application for Temporary Employment Certification* may be amended to make minor changes in the total period of employment. Changes will not be effective until submitted in writing and approved by the CO. In considering whether to approve the request, the CO will review the reason(s) for the request, determine whether the reason(s) are on the whole justified, and take into account the effect any change(s) would have on the adequacy of the underlying test of the domestic labor market for the job opportunity. An employer must demonstrate that the change to the period of employment could not have been foreseen, and the crops or commodities will be in jeopardy prior to the expiration of an additional recruitment period. If the request is for a delay in the start date and is made after workers have departed for the employer's place of work, the CO may only approve the change if the employer includes with the request a written assurance signed and dated by the employer that all workers who are already traveling to the job site will be provided housing and subsistence, without cost to the workers, until work commences. Upon acceptance of an amendment, the CO will submit to the SWA any necessary modification to the job order.

### POST-ACCEPTANCE REQUIREMENTS

### § 655.150 Interstate clearance of job order.

(a) *SWA posts in interstate clearance system.* The SWA must promptly place

the job order in interstate clearance to all States designated by the CO. At a minimum, the CO will instruct the SWA to transmit a copy of its active job order to all States listed in the job order as anticipated worksites covering the area of intended employment.

(b) *Duration of posting.* Each of the SWAs to which the job order was transmitted must keep the job order on its active file until 50 percent of the contract term has elapsed, and must refer each qualified U.S. worker who applies (or on whose behalf an application is made) for the job opportunity.

**§ 655.151 Newspaper advertisements.**

(a) The employer must place an advertisement (in a language other than English, where the CO determines appropriate) on 2 separate days, which may be consecutive, one of which must be a Sunday (except as provided in paragraph (b) of this section), in a newspaper of general circulation serving the area of intended employment and is appropriate to the occupation and the workers likely to apply for the job opportunity. Newspaper advertisements must satisfy the requirements set forth in § 655.152.

(b) If the job opportunity is located in a rural area that does not have a newspaper with a Sunday edition, the CO may direct the employer, in place of a Sunday edition, to advertise in the regularly published daily edition with the widest circulation in the area of intended employment.

**§ 655.152 Advertising requirements.**

All advertising conducted to satisfy the required recruitment activities under § 655.151 must meet the requirements set forth in this section and must contain terms and conditions of employment which are not less favorable than those offered to the H-2A workers. All advertising must contain the following information:

(a) The employer's name, or in the event that a master application will be filed by an association, a statement indicating that the name and location of each member of the association can be obtained from the SWA of the State in which the advertisement is run;

(b) The geographic area of intended employment with enough specificity to

apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor;

(c) A description of the job opportunity for which certification is sought with sufficient information to apprise U.S. workers of services or labor to be performed and the anticipated start and end dates of employment of the job opportunity;

(d) The wage offer, or in the event that there are multiple wage offers (such as where a master application will be filed by an association and/or where there are multiple crop activities for a single employer), the range of applicable wage offers and, where a master application will be filed by an association, a statement indicating that the rate(s) applicable to each employer can be obtained from the SWA of the State in which the advertisement is run;

(e) The three-fourths guarantee specified in § 655.122(i);

(f) If applicable, a statement that work tools, supplies, and equipment will be provided at no cost to the worker;

(g) A statement that housing will be made available at no cost to workers, including U.S. workers who cannot reasonably return to their permanent residence at the end of each working day;

(h) A statement that transportation and subsistence expenses to the worksite will be provided by the employer or paid by the employer upon completion of 50 percent of the work contract, or earlier, if appropriate;

(i) A statement that the position is temporary and a specification of the total number of job openings the employer intends to fill;

(j) A statement directing applicants to apply for the job opportunity at the nearest office of the SWA in the State in which the advertisement appeared. Employers who wish to require interviews must conduct those interviews by phone or provide a procedure for the interviews to be conducted in the location where the worker is being recruited at little or no cost to the worker. Employers cannot provide potential H-2A workers more favorable treatment with respect to the requirement and conduct of interviews; and